**The Irrelevance of Rap**

In recent years, a number of high-profile rappers have seen prosecutors use, or attempt to use, their music as evidence against them at a criminal trial. This is part of a growing trend of ‘prosecuting rap’, aided by easy access to lyrics and music videos through phones, social media and YouTube, and exacerbated by the recent moral panic over drill music (a rap subgenre). The full extent of the trend is not known. But my initial analysis of over 30 appeal judgments, reported between 2005 and 2020, paints a worrying picture in terms of both the implications of using rap as evidence and the way in which questions of relevance are assessed.

**The profile of cases**

Rap is often adduced as bad character evidence. It is used almost exclusively as evidence against young Black men and boys (usually teenagers) in London and other urban areas, and in ways in which other genres of music or forms of art are not.

Rap is usually used in cases involving serious offending, namely weapons offences, offences against the person, and homicide. Often these are cases of joint enterprise/secondary liability, where rap is used to link defendants to each other and the crime, and/or as evidence of gang involvement, to place the offence in a gang context.

**Issues of concern**

* Rap as ‘bad character evidence’
  + What is reprehensible about writing or performing violent or graphic rap? Is the same true of other violent genres and fictional art forms?
* The relationship between rap, race and gangs
  + Rap can be used to amplify stereotypes of Black men and boys as criminals, which are reinforced through a gang narrative. The term ‘gang’ has been disproportionately applied to Black people in a way that does not correlate to the commission of serious youth violence, such that the term itself evokes stereotypical images of Black male criminality. (See Amnesty International, *Trapped in the Matrix* (2018)).
* Police officers as rap experts
  + “the use of police officers as experts amounts to no more than the prosecution calling itself to give evidence.” (JUSTICE, *Tackling Racial Injustice: Children and the Youth Justice System* (2021) p.41).
* Underestimating prejudicial effect
  + Several studies have found bias against rap music, rooted in racial stereotypes. For example, in a 2018 study by Dunbar and Kubrin, participants were ‘more likely to assume that a rapper is in a gang, has a criminal record, and is involved in criminal activity than are artists from other music genres, and this is based merely on the genre of the lyrics’. (‘Imagining Violent Criminals: An experimental investigation of music stereotypes and character judgments’ (2018) 14(4) *Journal of Experimental Criminology* 507. See also, Dunbar et al, ‘The Threatening Nature of “Rap” Music’ (2016) 22(3) *Psychology, Public Policy, and Law* 288).

**Relevance**

In the case law, lyrics and videos were most commonly said to be relevant to D’s state of mind, motive, or were used to rebut a defence of innocent presence or association. BUT, is rap relevant?

* Rap cannot be taken at face value: “Rap music lyrics are neither inherently truthful, accurate, self-referential depictions of events, nor necessarily representative of an individual’s mindset.” (Andrea Dennis, ‘Poetic (in)Justice? Rap Music as Art, Life and Criminal Evidence’ (2007) 31 *Columbia Journal of Law & the Arts* 1, 4)
* There is no evidence to suggest rappers have a ‘comparative propensity’ to commit crime.
* The conventions of the genre: A question of admissibility or weight?
  + “the lyrics of songs that people choose to record on their phones will often or perhaps typically have no connection to the factual reality of their own lives. … it would have been reasonably apparent to the jury that lyrics of a song do not necessarily or perhaps commonly bear a connection with actual real life events.” *R v Soloman* [2019] EWCA Crim 1356 at [12] and [15]

**Factors that (should) affect relevance/probative value**

* Age of the material
  + *R v Sode* [2017] EWCA Crim 705: Video in which G, at age 14, “made a gesture supportive of the Anti-Shower Gang and remarks consistent with support of the Anti-Shower Gang” went to motive for a joint enterprise killing.
  + “The fact the video had been made some two years before does not reduce its impact or diminish its relevance” (at [53])
* Role in music videos
  + Presence is not enough (*R v Alimi* [2014] EWCA Crim 2412) but D need only play a minor or supporting role (*R v Lewis* [2014] EWCA Crim 48).
* Connection between the lyrics and the offence
  + Lyrics usually lack specificity and do not reference the crime that D is accused of.

**Relevance is relative**

Relevance is “a decision particularly vulnerable to the application of private beliefs. Regardless of the definition used, the content of any relevancy decision will be filled by the particular judge's experience, common sense and/or logic. For the most part there will be general agreement as to that which is relevant and the determination will not be problematic. However, there are certain areas of inquiry where experience, common sense and logic are informed by stereotype and myth.” (*R* v *Seaboyer* [1991] 2 SCR 577 per Justice L’Heureux-Dubé)

Viewing the relevance of rap music through the lens of the judiciary, aided by the lens of predominantly white police officers and prosecutors, arguably amounts to a form of ‘racialised epistemic injustice’.

**Conclusions**

* The case law demonstrates a relaxed approach to the assessment of the relevance of rap, with insufficient consideration given to artistic conventions or the broader context in which rap is created.
* If rap music is to be admissible as evidence, a much more rigorous approach to relevance is needed, informed by an insider’s perspective, and with the assistance of experts on rap music and culture.
* Even if one believes rap to be relevant, what about prejudicial effect?
  + This must be considered in the light of the over policing and over criminalisation of Black people and Black youth cultures, stereotypes about rappers as criminals, and enduring stereotypes about Black male criminality.

Further reading: <https://blogs.lse.ac.uk/politicsandpolicy/rap-lyrics-in-criminal-trials/>